



August 12, 2024

VIA ECF

Hon. Naomi Reice Buchwald, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl St.
New York, NY 1007

Re: *Le Brecht, II v. The Upper Deck Co., et al.*, Case No. 1:24-cv-1679(NRB)

Judge Buchwald,

This firm represents Plaintiff Michael J. Le Brech, II (“Plaintiff”) in the above-referenced matter. I write jointly with counsel for the Defendant The Upper Deck Company (“Defendant” or “Upper Deck”) in anticipation of the Initial Pretrial Conference currently scheduled for August 22, 2024.

1. Brief Description of Plaintiff’s Case and Defendant’s Defenses

Plaintiff: Plaintiff alleges that Upper Deck used his iconic photograph of LeBron James without permission or a license to create two related signed memorabilia products that Upper Deck and sold to various collectors and resellers. Plaintiff alleges Upper Deck infringed his copyrights and removed his copy management information in violation of his exclusive rights protected under the Copyright Act. Plaintiff seeks damages and other relief as permitted under the Copyright Act.

Defendant: Defendant denies any copyright infringement. Defendant also believes most, if not all, sales of the products in question fall outside of the operative statute of limitations. Defendant denies that Plaintiff was damaged or is entitled to relief.

2. Contemplated Motions

Plaintiff: Plaintiff intends to move for summary judgment following the close of discovery. Plaintiff’s counsel also has advised counsel for Defendant of defects in its various affirmative defenses, many of which have no possible basis in law or fact. Plaintiff intends to bring motion(s) related to these various affirmative defenses.

Defendant: Defendant may move for summary judgment or partial summary judgment regarding certain affirmative defenses including the statute of limitations. Depending on what kinds of damages are sought, Defendant may move to exclude Defendant’s expert witness testimony regarding damages.

3. *Prospect for Settlement*

Joint Statement: Counsel for the parties have engaged in initial settlement discussions and have agreed to continue to engage in further discussions in good faith.

Respectfully submitted,



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